



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

LYNDO TIPPETT  
SECRETARY

**North Carolina Board of Transportation  
Environmental Planning and Policy Committee  
Meeting Minutes for September 5, 2007**

A meeting of the Environmental Planning and Policy Committee (EPPC) was held September 5, 2007 at 8:40 AM in the Board Room (Room 150) of the Transportation Building. Board Member Nina Szlosberg chaired the meeting. Other Board of Transportation members that attended were:

Conrad Burrell  
Mac Campbell  
Douglas Galyon

Arnold Lakey  
Cam McCrae  
Andrew Perkins

Nina Szlosberg  
Lanny Wilson

Other attendees included:

Bob Andrews  
Debbie Barbour  
Tad Boggs  
Wally Bowman  
Greg Burns  
Alan Clark  
Marshall Dobson  
Rich Gannon  
Jennifer Garifo  
Bill Gilmore  
Lisa Glover  
Larry Goode  
Rob Hanson

Julie Hunkins  
Berry Jenkins  
Daniel Keel  
Shannon Lasater  
Matt Lauffer  
Don Lee  
Andy McDaniel  
Beth Leonard McKay  
Ehren Meister  
Jon Nance  
Sandy Nance  
Mike Pettyjohn  
Johanna Reese

Jason Robinson  
Bill Rosser  
Len Sanderson  
Joel Setzer  
Amy Simes  
John Sullivan  
Cheryl Teeters  
Greg Thorpe  
Lyndo Tippet  
Steve Varnedoe  
Marcus Wilner

Chairperson Nina Szlosberg called the meeting to order at approximately 8:50 AM. She opened by accepting a motion to approve the meeting minutes from the August 8, 2007 committee meeting. The minutes were approved as presented.

Ms. Szlosberg began by reviewing the North Carolina Department of Transportation's (NCDOT) work with the NC Department of Environment and Natural Resources (DENR) on the Jordan Lake Nutrient Strategy Rules. She reminded the Committee that the rules are legislatively mandated and passed to address the nutrient overloading and associated problems that have been experienced in this very important watershed and drinking water supply. Ms. Szlosberg stated that the rules are now out for comment and NCDOT has some concerns about some of the impacts of those rules on

this agency, financial and otherwise. She stated that NCDOT has been working for a number of months trying to find a way to balance the potential economic impact with NCDOT's concerns and desire to do the right thing for the environment. Ms. Szlosberg introduced Dr. Greg Thorpe, Manager of NCDOT's Project Development and Environmental Analysis Branch, to give an update on NCDOT's proposed comments on the Jordan Lake Nutrient Strategy Rules. Ms. Szlosberg reminded the Committee that comments are due to DENR by September 15, 2007.

Dr. Thorpe reviewed the discussions with Division of Water Quality staff and explained the process that NCDOT would like DENR to consider as part of the Jordan Lake Nutrient Strategy Rules. NCDOT has met with DENR Division of Water Quality (DWQ) staff twice since the last EPPC meeting -- August 14<sup>th</sup> and August 30<sup>th</sup>. Dr. Thorpe stated that staff is asking the Board to approve that Chairman Galyon and Secretary Tippet co-sign a letter that provides from both the Board of Transportation and the Department of Transportation staff on the proposed rules. NCDOT needs to comment on the rules that have been published in the North Carolina Register. Staff comments and recommendations on the proposed rules in the North Carolina Register have been distributed for Board and Department review. Comments include four major concerns. First is a need to develop additional technical basis for the rules. In discussions with DWQ, DENR and DOT have reached a verbal agreement to propose a two-year period, after an adoption of the rule, in which NCDOT would continue to collect additional data and do additional modeling. This will allow us to develop a better technical basis for the rules so that NCDOT can do a better job identifying our specific sources of nutrients. DWQ recommends a management plan that would not be exclusively focused on stormwater treatment in order to reduce the number of structural stormwater controls, as specified in the proposed rules, but would allow NCDOT to implement nutrient source reduction at those specific sources. It is NCDOT's belief that this type of management strategy would be more cost effective. Those conversations still need to be held with DENR's hearing officers and members of the Environmental Management Commission. NCDOT will continue to work with DWQ on that point and others over the course of the next month and report back to the Board.

Second, NCDOT is proposing that paragraphs 4(c) and 4(d) in Rule 0271 be removed because they are the most ominous and would require NCDOT to implement the most costly stormwater control structures. Robin Smith, Assistant Secretary, agreed to consider draft language from NCDOT on the proposed rules. NCDOT needs to draft proposed language that would substitute for paragraphs 4(c) and 4(d); in the substitute language, NCDOT intends to describe the process for developing a management strategy and reaching agreement on how the management strategy would be implemented. DWQ has also indicated their willingness to implement that management strategy through NCDOT's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.

Third, NCDOT's compliance with Jordan Lake Nutrient Strategy rules should be integrated through NCDOT's NPDES Stormwater Permit.

Fourth, DWQ has included a provision that would allow both NCDOT, other state and federal entities, and private developers to put structural stormwater controls in either Zone 1 or Zone 2 of the buffer if they are not able to do that in other parts of their project outside of the buffer. In the past, NCDOT has been able to implement more passive stormwater management. NCDOT is opposed to that proposal primarily because it goes against the intent of the buffer rule to preserve

those buffers, especially in Zone 1 of the buffers. It is NCDOT's belief that they do a more effective job managing stormwater and managing nutrients than structural stormwater control. NCDOT has controls over the maintenance of those stormwater controls in Zone 1 and how we would protect them from being inundated by floodwaters.

Dr. Thorpe informed that NCDOT staff will draft substitute rule language for paragraphs 4(c) and 4(d) and then meet with DWQ to present that draft rule language to them. The intent is to come to an agreement on what the substitute rule language should look like quickly so that DWQ may present it to their Hearing Officers. A report will be brought back to the EPPC at its next meeting.

Dr. Thorpe restated that the deadline for comments is September 15<sup>th</sup> and asked that the EPPC Committee approve the draft letter from NCDOT regarding comments on the Jordan Lake Nutrient Strategy Rules at its Board meeting on September 6. This would enable Secretary Tippet and Chairman Galyon to sign the letter and send it to DENR by the September 15 deadline. Mr. Andrew Perkins stated that he does not have a problem with that as long as they correlate the letter with the response received from Robin Smith on September 3<sup>rd</sup>. In addition, Mr. Perkins requested that NCDOT staff write a "white paper" that summarizes the verbal discussions and the innuendoes upon which we've agreed and why. The "white paper" should back up every level of what has been analyzed, discussed and agreed upon up to that point so there is a clear record. Ms. Szlosberg asked Mr. Perkins for clarification on what he is suggesting as a "white paper". Mr. Perkins stated that we need to capture the discussions at the end of the working meetings so there is an understanding of what was concluded before it goes out to the decision makers for concurrence and signature.

Rich Gannon with DWQ had completed a meeting summary for the August 14, 2007 meeting between NCDOT and DWQ that captures the discussions and agreements at that meeting. Alan Clark, at the end of the meeting on August 30 presented a verbal summary where what the two agencies had agreed on and where the discussions stand.

A suggestion was made that whomever the lead agents are for the two departments would simply initial off that this is what we have concurred on so there is documentation on what has been agreed upon up to this point.

Ms. Szlosberg asked Mr. Perkins if his suggestion is to have a "white paper" that accompanies the comment letter to DENR on the Jordan Lake Nutrient Strategy Rules or if this "white paper" is for documentation for our records.

Mr. Perkins commented that for those individuals who don't understand the background, a "white paper" should accompany the letter for the Board Meeting so they can understand the flavor and the richness of the discussions as it is difficult to capture from these four points alone. It might be easy for individuals to assume these are very volatile issues that we have to deal with, but they don't understand the background information or the rationale for these four major recommendations. As a minimum, it should be provided for the Board Members' discussion. Ms. Szlosberg asked if Dr. Thorpe could accommodate that request and Dr. Thorpe responded, "we will do our best."

Mr. Matt Lauffer, NCDOT Hydraulics Engineer, clarified that there are two on-going processes. The first is the process of commenting on the proposed rules themselves and what they say as they have been published. The second process is one in which NCDOT is working with DWQ on an alternative language that would be acceptable – “substitute language”. These are two independent parallel processes, although the issues sometimes overlap.

Mr. Perkins recommended backup documents for both processes to show how conclusions were reached on both issues.

Mr. Alan Clark of the Division of Water Quality commented that DENR appreciates the discussions that agencies are having and believes we are moving in a good direction.

Ms. Szlosberg conveyed thanks and appreciation for DENR working with us. She also reminded us that Governor Easley’s administration initially stated that NCDOT and DENR needed to work together to move the state forward. Ms. Szlosberg commented that we have come a light years in that relationship and want to continue to acknowledge our appreciation for that collaboration and partnership.

For clarification, Chairman Galyon asked Dr. Thorpe if he was going to provide the white paper that Mr. Perkins had requested. Dr. Thorpe responded that he would provide the Board a summary of where we are in the discussions for their information and that what NCDOT staff intends to attach to the comment letter is actually a detailed, annotated copy of the proposed rules where we suggest specific changes that the general comments address.

Ms. Szlosberg acknowledged the letter received from Robin Smith that reiterates today’s discussions, that there are ongoing discussions and DENR’s willingness to try to come up with a solution that meets everybody’s needs.

Ms. Szlosberg suggested that the EPPC recommend to the full Board that the Board adopt this letter to fulfill our requirement for comment for the proposed Jordan Lake Nutrient Strategy rules with the additions we have suggested this morning. A motion was made by Mac Campbell to take the letter on the proposed rules to the Board for action on Thursday, September 6, 2007. Conrad Burrell seconded the motion. .

Seeing no further questions or comments, Ms. Szlosberg adjourned the meeting.

The next meeting for the Environmental Planning and Policy Committee is scheduled for Wednesday, October 31, 2007 at 8:30 AM in the Board of Transportation Room (Room 150) of the Transportation Building.

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